

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KRAIG A. BOTTEMILLER

Appeal No. 2006-0907
Application No. 09/876,379¹

ON BRIEF

Before BARRETT, RUGGIERO and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

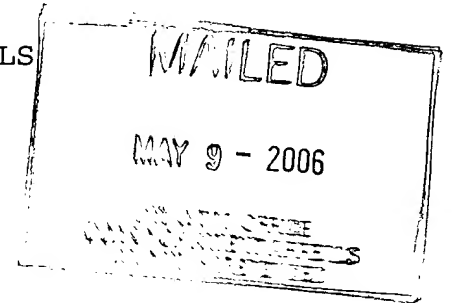
This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-14, Which are all of the claims pending in this application.

We affirm.

BACKGROUND

Appellant's invention is directed generally to a method for profiling data processing systems and for recording and transmitting system performance data. According to Appellant, profiling is a common technique by which monitoring codes are added to the executable files for recording various types of

¹ Application for patent filed June 7, 2001.



statistical data during program execution (specification, page 1). Appellant provides for a method wherein upon receipt of a valid address, relevant data is sampled and stored before a transaction timer is set. Furthermore, the present operation is held if it is considered secondary until a higher priority operation completes at which point the secondary operation is designated a primary operation and repeated until all relevant operations end (specification, page 4). An understanding of the invention can be derived from a reading of exemplary independent claim 1, which is reproduced as follows:

1. A communication profiler, for use with a data proceeding system including a processor and a memory coupled by a system interconnect, wherein said communication profiler comprises:

a control unit including an input port coupled to said system interconnect, wherein said control unit receives a collection of data via said input port as a result of a tenure on said system interconnect, wherein said control unit filters said collection of data from said tenure to obtain specific data requested by a user and organizes said specific data as a summary, wherein said control unit filters said collection of data without perturbing the operation of said data processing system.

The Examiner relies on the following reference:

Sidi et al. (Sidi)	6,282,562	Aug. 28, 2001
		(filed Jan. 14, 1999)

Claims 1-14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sidi.

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Rather than reiterate the opposing arguments, reference is made to the brief (filed August 25, 2005) and answer (mailed November 16, 2005) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the brief have not been considered (37 CFR § 41.37(c)(1)(vii)).

OPINION

The focus of Appellant's arguments is that Sidi does not teach or suggest the claimed feature of "said control unit filters said collection of data without perturbing the operation of said data processing system" (brief, page 5). Appellant argues that Sidi discloses observing communications and applying "response time degradation" to discourage users of the data communications system from economically disadvantageous interactions (col. 2, lines 34-37) which clearly perturb the operation of the system (id.). Particularly, Appellant asserts that the response time of communication in Sidi that is deemed economically disadvantageous (col. 2, lines 40-50) is degraded, which alters or "perturbs" the operation of the data communications systems in order to discourage their use (id.).

In response, the Examiner points out that the term "perturb" is not specifically defined in the specification and therefore, its broadest reasonable interpretation may be relied on (answer, page 7). Relying on "The American Heritage College Dictionary" definition, the Examiner asserts that the modifications described in Sidi do not "disturb greatly" or "perturb" the system (id.). The Examiner additionally argues that although Sidi slows unnecessary system usage in order to allow high priority services access to the system by "discouraging" the unnecessary system usage, the overall performance and usefulness of the system is actually enhanced (id.).

A rejection for anticipation requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713

F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to "'read on' something disclosed in the prior art reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it." See also Atlas Powder Co. of Am. v. IRECO Inc., 190 F.3d at 1346, 51 USPQ2d at 1945 (Fed. Cir. 1999) (quoting Titanium Metals Corp. v. Banner, 778 F.2d 775, 781, 227 USPQ 773, 778 (Fed. Cir. 1985)).

To determine whether the Examiner has properly identified the claimed elements in the prior art reference, we rely on Appellant's specification to define the meaning of the term "perturb." However, other than nominally mentioning the term (page 10, lines 5 and 20), nowhere in the specification is the claimed term "Perturb" described. In fact, a delayed operation does not greatly disturb the operation similar to the process depicted in Appellant's Figure 5 wherein, if the operation is deemed secondary, the operation is "delayed" until the primary operation is complete and the delayed operation becomes the primary one (steps 508, 516 and 518). Therefore, absent a specific definition in the specification for the term, we find the Examiner's characterization of the claimed term "perturbing" as "greatly disturbing" and reading the claimed profiling on the system described in Sidi to be reasonable.

We also agree with the Examiner's position that Sidi introduces selective increasing of delay in response time in order to improve the access time for other activities that are deemed more economically advantageous. In particular, we find that Sidi makes a determination of the more important activities compared to the other permissible, but less important, activities (col. 2, lines 39-47). All Sidi does is to introduce a degradation in response time to a less important activity during those times when more important activities take place and require fast access to the communications system (col. 2, lines 48-51). As pointed out by the Examiner (answer, page 7), this delay still allows monitoring the system without perturbing the operation of the system since it does not greatly disturb the operation of the less important activities. Therefore, we remain unconvinced by Appellant's arguments that the term "without perturbing the operation" means anything other than what the Examiner pointed out and, therefore, is taught by the prior art reference.

Based on our findings above, we agree with the Examiner that Sidi prima facie anticipates the claimed subject matter in the representative independent claim 1 and claims 2-14, argued

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therewith as one group. Accordingly, the 35 U.S.C. § 102(e) rejection of claims 1-14 over Sidi is sustained.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 1-14 under 35 U.S.C. § 102 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Lee E. Barnett

LEE E. BARRETT
Administrative Patent Judge

Joseph V. Russo

JOSEPH F. RUGGIERO
Administrative Patent Judge

Maximilian D. Quadant

MAHSHID D. SAADAT
Administrative Patent Judge

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